

B-23

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of J.B., Department of
Treasury

CSC Docket Nos. 2015-1830

Discrimination Appeal

ISSUED: **SEP 04 2015** (SLK)

J.B., a Data Entry Operator 2 with the Department of Treasury, represented by Lourdes Lucas, Esq., appeals the attached decision of the appointing authority's Equal Employment Opportunity/Affirmative Action/Diversity (EEO/AA) Officer, which found that the appellant did not present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, the appellant filed a complaint alleging discrimination by R.S., a Data Entry Operator 3, B.B., a Data Entry Operator 2, J.T., a Data Entry Operator 1, and K.M., a Data Entry Operator 2, against her based on her perceived sexual orientation. For example, she claimed that those individuals made multiple statements regarding her perceived sexual orientation, made threatening and intimidating statements towards the appellant and her property, and installed a camera above her desk. The appointing authority's EEO/AA interviewed four witnesses provided by the appellant and pertinent human resources records were reviewed. All four witnesses interviewed denied seeing or hearing any of the incidents that the appellant detailed. Therefore, it found no evidence to support the allegations.

On appeal, the appellant asserts that the EEO/AA only interviewed those individuals who perpetrated the hostile work environment against her so it is not surprising that those individuals denied the allegations. The appellant also contends that the EEO/AA improperly limited its investigation by only asking her for the names of the individuals who committed the wrongful acts and not those who had actually witnessed the discrimination against her.

In response, the appointing authority, represented by Anthony DiLello, Deputy Attorney General, provides that the EEO/AA conducted a thorough investigation which including interviewing the appellant, the four employees she named as respondents to her complaint, and the four additional employee witnesses whose names she provided to the EEO/AA. It presents that during the initial interview by the EEO/AA, the appellant was asked to provide all of the names of the individuals she claimed were harassing her and all witnesses who allegedly witnessed such harassment. The appointing authority indicates that all of the witnesses the appellant provided were interviewed and none of them corroborated her allegations.

In reply, the appellant submits a certification from L.C., a Data Entry Operator 2, which states that on multiple occasions she witnessed C.G.,¹ a Data Entry Operator 3, speaking about the appellant in a slandering manner.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as sexual orientation, is prohibited and will not be tolerated. It is also a violation of the State Policy to use derogatory or demeaning references regarding a person's gender, affectional or sexual orientation, or any other protected category. A violation of the State Policy can occur even if there was no intent on the part of an individual to harass or demean another. See *N.J.A.C.* 4A:7-3.1(b). Moreover, *N.J.A.C.* 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

The Commission has conducted a review of the record in this matter and finds that the appellant has not established that R.S., B.B., J.T. or K.M. has violated the State Policy. During the course of the investigation, the EEO/AA interviewed the appellant, the four accused individuals, and the four witnesses who the appellant provided to it as being witnesses to the alleged discrimination. However, none of the witnesses corroborated the appellant's instant allegations nor was there any other corroborating evidence. As such, the EEO/AA found no evidence to support the appellant's claims that she had been subjected to a violation of the State Policy.

¹ C.G. was not one of the named respondents in the appellant's February 20, 2014 letter to the appointing authority which is the complaint in this matter. The appointing authority's Acting Director, Division of Administration issued a determination letter on April 23, 2015 which indicated that the appellant filed a separate complaint on December 19, 2014 against C.G. alleging that she discriminated against her on the basis of affectional/sexual orientation and for retaliation. The appointing authority determined that the allegations against C.G. could not be sustained. The appellant did not appeal the appointing authority's April 23, 2015 determination and thus these allegations will not be discussed in this matter. See *N.J.A.C.* 4A:7-3.2(m).

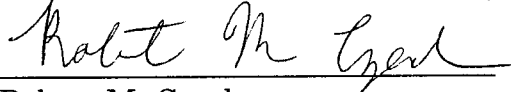
The appellant now submits a certification from a co-worker who states that she witnessed sexual orientation discrimination against the appellant from someone the appellant had not accused in her February 20, 2014 letter to the appointing authority which is the complaint in this matter. Consequently, this certification is not evidence that any of the respondents that are the subject of this matter discriminated against the appellant. Accordingly, the Commission finds that the EEO/AA's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support her burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 2nd DAY OF SEPTEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
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Written Record Appeals Unit
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Attachment

c: J.B.
Lourdes Lucas, Esq.
Deirdre L. Webster, Esq.
Anthony DiLello, DAG
Mamta Patel
Joseph Gambino



State of New Jersey

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

DEPARTMENT OF THE TREASURY
DIVISION OF ADMINISTRATION
OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY/
AFFIRMATIVE ACTION AND DIVERSITY PROGRAMS
P.O. BOX 210
TRENTON, NJ 08625-0210

ANDREW P. SIDAMON-ERISTOFF
State Treasurer

December 10, 2014

Ms. J. B. [REDACTED]
[REDACTED]

Re: Discrimination Complaint Decision

Dear Ms. B. [REDACTED]

This is in further reference to the complaint you filed on February 20, 2014 against R. [REDACTED], S. [REDACTED], B. [REDACTED], J. [REDACTED], and K. [REDACTED] M. [REDACTED] on the basis of sexual orientation.

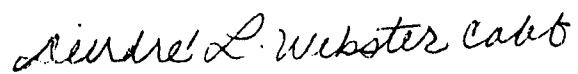
The Office of EEO/AA conducted a thorough investigation during which four witnesses provided by you were interviewed and pertinent human resources records were reviewed. All four witnesses interviewed denied seeing or hearing any of the incidents you detailed. Ms. B. [REDACTED] the burden of proof in discrimination cases is on the complainant. Since none of the witnesses presented corroborated your allegations and absent other evidence to corroborate your allegations, a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace based on affectional/sexual orientation and retaliation is could not be substantiated. As a result, no further action will be taken in this matter.

If you disagree with this determination, you have the right to file an appeal with the New Jersey Civil Service Commission within 20 days of your receipt of this letter. The burden of proof is on the appellant. The appeal must be in writing state the reason(s) for the appeal and specify the relief requested. All materials presented at the department level and a copy of this determination letter must be included. The appeal should be submitted to the NJ Civil Service Commission, Director of the Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, NJ 08625-0312. Please be advised that pursuant to P.L. 2010, c. 26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order, payable to the "NJ CSC." Persons receiving public assistance pursuant to P.L. 1997, c. 38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Please be advised that the State Policy prohibits retaliation against any employee who alleges that she or he was the victim of discrimination or harassment, provides information in the course of an investigation into claims of discrimination or harassment, or opposes a discriminatory practice. In

addition, all aspects of EEO complaints, investigations and determinations are considered confidential. You should not discuss this matter, including the outcome, with anyone else.

Sincerely,

A handwritten signature in cursive script that reads "Deirdre L. Webster Cobb".

Deirdre L. Webster Cobb, Esq.
EEO/AA Officer

Cc: Mamta Patel, Director – Division of EEO/AA
Anthony DiLello, DAG – Division of Law
James Fruscione, Director – Division of Revenue